

## **Rationale for the “Contained-in Determination” Policy**

The Indiana Department of Environmental Management (IDEM) “Contained-in Determination” Policy evolved from a policy developed by the United States Environmental Protection Agency (US EPA). It is not based on statute or rule, but rather allows for the regulated community to operate more efficiently within a rigid system of rules and statutes. The IDEM has utilized a contained-in policy for some time and is seeking to update that policy [currently Non-Rule Document Waste-0052-NPD] to reflect changes related to the implementation of that policy.

The “Contained-in Determination” Policy is intended to allow the regulated community to remediate minimally contaminated sites in a more economical manner. This allows for the cleanup of more sites, and results in the regulated community redeveloping sites, creating additional jobs (both in the remediation and redevelopment areas), and strengthening communities.

The “Contained-in Determination” Policy allows for environmental media (groundwater and/or soil), minimally impacted with listed hazardous waste, to be excluded from the hazardous waste regulations and be disposed of as a less regulated and less expensive solid waste.

Listed hazardous wastes are wastes that the US EPA determined were hazardous wastes based upon what the wastes were comprised of, the processes generating the wastes, and the use of the material(s) resulting in the waste. Listed hazardous wastes are considered to be hazardous wastes regardless of the concentrations of the hazardous waste constituents.

Listed hazardous waste impacting environmental media (groundwater and/or soil) result in the environmental media being considered to be listed hazardous waste when generated for disposal. Basically, if the listed hazardous waste constituents could be detected, any environmental media generated at the site were also listed hazardous wastes. This was not deemed problematic at the time of the inception of the Resource Conservation and Recovery Act (RCRA) hazardous waste rules. As time passed and analytical methods improved, the levels where the listed hazardous waste constituents could be detected and the waste deemed to be impacted with listed hazardous waste improved from the mere parts per million range to the parts per billion range [and even border on the parts per trillion range].

Listed hazardous waste constituents can now be detected at levels where they were previously below detectable limits. The ability to analyze for the hazardous waste constituents at those levels has resulted in hazardous waste regulations now applying to what was previously considered to be non-impacted and nonhazardous media. The hazardous waste regulations for listed hazardous wastes do not make an exception for the concentration of a hazardous waste constituent. If a media is impacted by a listed hazardous waste source and the hazardous waste constituents are detected at any concentration, the resulting impacted environmental media is considered to be a listed hazardous waste when generated.

Currently, risk-based/health-based closure levels are often greater than the detection limits used when analyzing for the listed hazardous waste constituents. That has resulted in the dichotomy of allowing minimally contaminated media to remain in place under a risk-based/health-based closure, but be subject to full hazardous waste regulation if the same minimally impacted media is excavated to remediate the site.

The “Contained-in Determination” Policy is a case-by case review where an exemption from being a hazardous waste is granted for a specific media that is contaminated with listed hazardous waste constituents. The exemption is based on the concentrations of hazardous waste constituents being lower than risk-based/health-based screening closure levels and would specify that the impacted media be managed in specific manners that would still be protective of human health and the environment.

The risk-based/health-based closure screening levels proposed in the revised Non-rule Policy Document (NPD) are the US EPA Site Screening Levels currently adopted by the IDEM and used in the IDEM Remediation Closure Guidance (RCG) document. These health-based levels screening level, while used by the IDEM, are continually researched, updated, and maintained by the US EPA.

The IDEM health-based RISC Closure Levels previously used as ‘exit criteria’ in the contained-in determination were developed in-house by the IDEM Risk Assessment staff. Those closure numbers are no longer supported by the Department and have been replaced with the aforementioned USEPA Site Screening Levels. Use of the US EPA Screening Levels will be beneficial in several ways. The US EPA Screening levels are much more extensive and encompass more compounds than the former IDEM RISC Closure Levels allowing for additional hazardous waste constituents to be addressed by the “Contained-in Determination” Policy. The use of the federal Screening level number allows for added consistency with the US EPA and with other states utilizing the same information in their own contained-in determination programs.

By allowing the case-by-case exemption through the “contained-in” determination, impacted media that would have been too costly to remediate as a listed hazardous waste can be disposed of as less expensive non-hazardous contaminated media. Sites that would have been too expensive to remediate and revive as active businesses may have been left unused and may have been subject to restrictive environmental covenants.

Independent of cost, remediation is preferable to leaving contamination in place. Once remediated, a property becomes more of an asset and less of a liability, and the potential for redevelopment and adding jobs and income related to that property become more likely.